

FILED
SUPREME COURT
STATE OF WASHINGTON
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NO. 98154-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JULIAN PIMENTEL,

Petitioner.

v.

THE JUDGES OF THE KING COUNTY SUPERIOR COURT and
DAN SATTERBERG, KING COUNTY PROSECUTING ATTORNEY,

Respondents.

PETITIONER PIMENTEL'S REPLY TO
ANSWER OF RESPONDENTS

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I. RESPONSE TO RESPONDENTS' STATEMENT OF THE CASE

A. There are No Material Factual Disagreements Between the Writ and Respondents' Answer

In its Answer, the Respondents agree that the detective was not requesting that the charges be “rushed filed” and “he did not object to the release of Pimentel.” Answer at p. 2. This is important because the detective was essentially stating that he did not consider Pimentel a danger either to ARW, the complainant, or the community generally or a flight risk.¹

The Respondents also assert in their Answer at pages 2-3 that the District Court judge did not have the four-page Certification for Determination of Probable Cause (hereinafter “Certificate”) at the time of the April 18, 2018 hearing, contrary to the averments in the Allen Declaration. Instead, they contend that the judge had the one paragraph Statement of Probable Cause: Non-VUCSA Felony (hereinafter “Statement”) form which was attached to the Superform.² From this they argue that the District Court judge “was not aware of the statements from

¹ Yet, the DPA did not inform the Superior Court judge of this when she asked for a warrant and that bail be set, *ex parte*, which violated her ethical duty under RAP 3.3(f) “Candor to the Tribunal.” (*See* Pimentel writ at pp. 5-9.)

² The Superform with the one paragraph Statement is attached hereto as Appendix A.

friends that corroborated ARWs account,” which was its sole reason to justify its *ex parte* bail increase.

As explained in the Application for Writ of Prohibition (hereinafter “Writ”) at pp. 7-9, whether or not there was any corroboration for the complainant’s claim was irrelevant as to the setting of bond or for any other matter.³ RCW 9A.44.020(1), relating to sexual assault cases, states that corroboration of a victim’s allegation is unnecessary:

In order to convict the person of any crime defined in this chapter **it shall not be necessary that the testimony of the alleged victim be corroborated.**

The strength of the State’s case, including whether the victim’s claim is corroborated, is nowhere mentioned as a factor in determining conditions of release. *See* CrR 3.2. Moreover, there was no issue as to the existence of probable cause to sustain a charge because the District Court had already found that probable cause existed. *See*: Declaration of David Allen in Support of Writ, Appendix A, RP 3.

³ With the exception of establishing probable cause, which was not an issue.

B. Petitioner Will Concede That the District Court Judge Reviewed the One Paragraph Statement of Probable Cause Rather Than the 4 Page Certification for Determination of Probable Cause as the Respondents Assert

For the purpose of this Writ and to avoid a factual dispute, the defense will concede that the one paragraph Statement of Probable Cause which was attached to the Superform (*see* App. A, hereto), was the document the District Court reviewed, rather than the four-page Certification of Probable Cause. This will remove any factual disagreements.

The Respondent tries to justify its *ex parte* bail increase by claiming that the one paragraph Statement of Probable Cause reviewed by the District Court Judge “did not discuss whether there were witnesses to the incident.” Answer, p. 2. On the contrary, this one paragraph Statement of Probable Cause attached to the Superform (Appendix A hereto) makes it clear that ARW’s friends witnessed the alleged conduct. It states that “Pimentel, **ARW and ARW’s friends** went to the Commons Mall, where Pimentel stole a bottle of vodka.” It continues that “they all drank alcohol at the mall before eventually going to **ARW’s friend’s house**.” At the house, the detective wrote that ARW drank alcohol “while she was in the camper with Pimentel **and two other friends**.” It further states that ARW was heavily

intoxicated lying on a bed in a camper and “**Pimentel had the others leave** the camper for about thirty minutes.”

This statement of facts clearly informed the District Court judge that ARW’s friends were witnesses to the alleged allegations.

While the four-page Certification for Determination of Probable Cause provided a few more details, they were all consistent with the one paragraph probable cause Statement and added nothing in terms of considerations relevant to CrR 3.2 “Release of Accused.” Instead, the DPA left out the many facts presented at the first appearance hearing justifying the PR release in violation of RPC 3.3(f).

II. REPLY TO RESPONDENT’S ARGUMENT THAT THE KING COUNTY PROSECUTING ATTORNEY IS NOT A STATE OFFICER

Respondents argue that the King County Prosecuting Attorney is not a state officer.⁴ In support thereof, the Respondents reference Article 11, Section 5 of the Washington State Constitution as authority. However, this provision only supplies authority for the legislature to “provide” for the election of prosecuting attorneys and others “in the several counties.”

⁴ Respondents ignore the fact that every Information filed carries the caption “State of Washington v. [Defendant]” and that DPA’s typically introduce themselves to juries as “representing the State of Washington.”

RCW 36.17.020 “Schedule of Salaries,” provides that the State shall pay at least 1/2 of what it pays a Superior Court Judge towards a county’s PA’s salary. Under the official notes following this statute, the legislature wrote that elected county prosecuting attorney function “as a state officer” in pursuing criminal cases.⁵ The official notes from the 2008 legislative session state:

Findings--2008 c 309: “The legislature finds that an elected county prosecuting attorney functions as both a state officer in pursuing criminal cases on behalf of the state of Washington, and as a county officer who acts as civil counsel for the county, and provides services to school districts and lesser taxing districts by statute. (Emphasis added).

2008 c 309 § 1.

This establishes beyond any question that a PA is a state official when prosecuting criminal felony cases, as here.

Likewise, in *Whatcom County v. State*, 99 Wn.App. 237 (2000), *rev. den.*, 141 Wn.2d 1001 (2000), Whatcom County brought a declaratory judgment action against the Attorney General (AG) to determine whether the county prosecuting attorney (PA), as well as his deputy (DPA), were state officers, which would entitle them to a defense by the AG and indemnification

⁵ See Appendix B hereto for a copy of this statute with the accompanying official notes.

in a civil rights lawsuit brought by the estate of a homicide victim.⁶ The “State’s central argument” in *Whatcom County* was that county prosecutors represent the county and therefore the prosecutor “cannot be a ‘state officer.’” *Id.* at 242-43.

The COA held that the PA and his DPA were “state officers,” writing that it was significant that one half of an elected prosecuting attorney’s salary is paid for by the state pursuant to RCW 36.17.020, and that prosecuting attorneys “appear for and represent the state and the counties in court,” “subject to the supervisory control and direction of the attorney general.” *Id.* at 247-48. If the AG determines that criminal laws were improperly enforced in a county due to failure or neglect by the PA, the AG could take over the prosecution pursuant to RCW 43.10.090 and a PA could be removed from office by the state legislature. *Id.* at 248.

⁶ In the underlying civil case, the estate alleged that the DPA acted negligently and in violation of the victim’s civil rights for giving erroneous advice to a jail officer that a felony defendant could be released from jail, who then murdered his girlfriend.

III. BOTH THE SUPERIOR COURT JUDGES AND THE KING COUNTY PROSECUTING ATTORNEY HAVE ACTED BEYOND THEIR JURISDICTION BY ENGAGING IN AN UNCONSTITUTIONAL PRACTICE OVER SEVERAL DECADES OF RAISING BAIL *EX PARTE* AFTER THE INITIAL APPEARANCE

A. Where the Elected Prosecutors and Superior Court Bench Have Established an Unconstitutional Procedure for *Ex Parte* Bail Increases, They are Acting Either Without Jurisdiction or Beyond Their Jurisdiction

Where, as here, an elected prosecutor, his deputies and the Superior Court bench engaged in the long standing *ex parte* bail procedure which is unconstitutional and also violate ethics rules, they are acting either beyond their jurisdiction, or conversely, without jurisdiction, such that a writ of prohibition is available to enjoin their actions.

Respondents cite *Riddle v. Elofson*, 193 Wn.2d 423 (2019) in support of its position. A careful reading of *Riddle* will demonstrate that it actually supports Petitioner's position. In *Riddle*, the Yakima County Clerk sought a writ of prohibition against the Yakima Superior Court Judges as to their efforts in requiring her to procure an additional bond as a condition of maintaining her elected office. In a plurality decision, this Court denied her writ on two grounds. First, the Court found that an adequate remedy at law existed in that the Clerk could have requested an injunction. This Court

also held that the judges did not exceed their jurisdiction by issuing the supplemental bond order.

In her petition, the Clerk asserted a Due Process constitutional claim contending that the bond increase order:

exceeded the Superior Court bench's statutory authority **and that its *ex parte* issuance deprived Riddle of proper notice and opportunity to be heard, in violation of due process.**

Id. at 427 (emphasis supplied).

This Court did not reach the due process issue because it “resolve[d] the case on non-constitutional grounds.” *Id.* at 429-430. Nevertheless, this Court acknowledged Riddle's Due Process claim, but found it unnecessary to consider it, because the Judges clearly had statutory authority pursuant to RCW 36.23.020. *Id.* at 438. This Court wrote:

We decline to reach Riddle's due process argument because we resolved this case on other non-constitutional grounds.

*Id.*⁷

The obvious takeaway from *Riddle* is that a constitutional Due Process challenge will suffice as a jurisdictional basis for a constitutional writ of prohibition challenging an unconstitutional procedure by Judges and prosecutors. If this were not the case, this Court would have said that

⁷ The Dissent also recognized Riddle's Due Process challenge and likewise wrote that it was unnecessary to reach it to resolve the matter. Yu, dissent, 193 Wn.2d at 442, n. 1.

Riddle’s Due Process constitutional challenge was not cognizable on a writ of prohibition, rather than explaining, as it did, that it would decide the matter on statutory grounds and therefore not need to reach the constitutional issue.

Unlike *Riddle*, here there is no valid statutory basis by which the Respondents can justify this *ex parte* bail procedure. This Court must therefore consider the constitutional arguments to determine whether the Respondents acted within their authority and jurisdiction.⁸

B. There is no Adequate Remedy Available to Challenge This Longstanding Unconstitutional Practice Other Than by a Writ

Respondents, citing *Kreidler v. Eikenberry*, 111 Wn.2d 828, 838 (1989), argue that Petitioner has not demonstrated that there is “the absence of a plain, speedy, and adequate remedy in the course of legal proceedings.” However, *Riddle* emphasizes that a petitioner is only required to show that there is no “adequate” remedy:

The complete absence of any “other remedy” is not strictly required. . . . The operative word of the second prong is the “adequacy” of the remedy available. (Internal citations omitted.)

⁸ Although Riddle lost her bid for re-election and was no longer the Yakima County Clerk at the time of the decision, no party suggested that this case should be dismissed as moot and instead was considered “as a live controversy.” Yu, dissent, *id.*, n. 2.

Riddle v. Elofson, supra, 193 Wn.2d at 434. Moreover, if there is an available remedy, it must also be plain and speedy. *Kreidler, supra* at 838.

Respondents suggest that the issue raised by Pimentel could have been challenged on appeal. As set forth on pages 10-13 of Petitioner's Writ, bail issues quickly become moot and there were no grounds at law to challenge the *ex parte* bail matter once bail is posted and a case is dismissed. See RAP 2.2.

In support of its position, the Respondents cite *State v. Barton*, 181 Wn.2d 148 (2014) (at page 9 of its Answer) explaining that an interlocutory appeal was brought challenging a cash bail order. From a reading of the decision in this case, it appears that the defendant was not able to post the cash bail required and was in custody, at least at the time the bail order was interlocutory appealed, and the issue was not moot.

State v. Ingram, 9 Wn.App.2d 482 (2019), cited by Respondents at page 7, was previously discussed in detail in Petitioner's Writ at pages 12-13. In that case, unlike *Pimentel*, there was at least one viable ground for an appeal, irrespective of the moot bail issue. Other cases cited by Respondents at page 9 of the Answer fit this mold: *State v. Reese*, 15 Wn.App. 619 (1976) (the defendant was convicted of second degree assault and raised the bail issue in the context of other issues in the case that were appealable); *State v. Huckins*, 5 Wn.App.2d 457, 459 (2018) (there was a

ground for appeal besides the moot bail issue, where a defendant “also challenges several provisions of his sentence,”).⁹

Respondents argue that the “normal appellate process” provides an effective remedy. However, the granting of an interlocutory appeal is discretionary as well as disfavored. *Minehart v. Morning Star Boys Ranch*, 156 Wn.App. 457, 462 (2010). While in some cases appellate courts have agreed to review moot bail issues, these are the exceptions, not the rule, and are discretionary. Especially in a case such as *Pimentel* where it was dismissed, so there was no appealable order and the disputed bond had been posted and the defendant released, one cannot say with any confidence that the COA would have exercised its discretion and reviewed this matter. This cannot be considered “a plain, speedy, and adequate” remedy at law.

C. **This Court Has Many Times Accepted Review in Matters Where There was Great Public Interest and the Matter Has Been Adequately Briefed**

Respondents argue that the Writ should be dismissed on various grounds, including deficiencies in the Writ. Without conceding that this is the case, this court has held many times that where a matter is of great public interest and has been adequately briefed, that it would exercise its discretion in declaring the rights of the parties:

⁹ *Yakima v. Mollett*, 115 Wn.App. 604 (2003) is the only case cited where a moot bail issue dealing with the issue of cash only bail was reviewed, and is clearly an outlier.

Where the question is one of great public interest and has been brought to the court's attention in the action where it is adequately briefed and argued, and where it appears that an opinion of the court would be beneficial to the public and to the other branches of the government, **the court may exercise its discretion and render a declaratory judgment to resolve a question of constitutional interpretation.**

Lee v. State, 185 Wn.2d 608, 618 (2016) (emphasis added).

Even where an original action was designated a Writ of Mandamus, this court has nevertheless reviewed it as if it were a request for declaratory judgment where there was an issue of public interest that needed to be resolved:

It is true that the question does not come before us in the form of a request for a declaratory judgment. However, the relief sought is in essence the same, and we regard it in the public interest to disregard the form of the action and to render our interpretation.

State ex rel. Distilled Spirits Inst., Inc. v. Kinnear, 80 Wn.2d 175, 178-79 (1972).

D. If This Court Believes That the Requisites for a Writ of Prohibition are Not Met, Then it Should Exercise its Discretion and Consider it as a Petition for a Writ Of Mandamus

This Court has reviewed writ petitions where it has determined that the requisites for a specific writ were not met but nevertheless still considered it as an alternative writ. For example in *State v. Superior Court of Grays Harbor Co.*, 29 Wn.2d 725 (1948), the petitioner filed a Writ of Prohibition

challenging a denial of a change of venue. This Court held that the proper vehicle to accomplish this was a Writ of Certiorari, and nevertheless reviewed it as such and granted relief. *Id.* at 732.

Consistent with this, in *Freeman v. Gregoire*, 171 Wn.2d 316, 323 (2011) this court explained:

This court has original jurisdiction over writs of quo warranto or **mandamus**, but only appellate and revisory jurisdiction over writs of prohibition. Wash. Const. art. IV, § 4. **Nonetheless, we can issue a writ to prohibit a state officer from exercising a mandatory duty.** *Wash. State Labor Council v. Reed*, 149 Wash.2d 48, 55–56, 65 P.3d 1203 (2003). **The only relief requested by petitioners in their petition against state officer was a writ of prohibition. Pet. Against State Officer at 1–2. In later briefings, petitioners expanded this remedy to include a writ of mandamus. Accordingly, we treat petitioners’ action as one for mandamus.** (Emphasis added).

This Court has exercised its original jurisdiction on a Writ of Mandamus where the constitutionality of a statute was at issue. *Dept. of Ecology v. State Finance Committee*, 116 Wn.2d 246, 251-252 (1991); *Brown v. Owen*, 165 Wn.2d 706, 718 (2009) (mandamus is appropriate to challenge constitutionality of a statute).

Mandamus also is available to compel Judges, as well as prosecutors, to comply with constitutional requirements in criminal cases. *Seattle Times v. Ishikawa*, 97 Wn.2d 30 (1982) (an original Writ of Mandamus action in the Supreme Court by news media challenging the closure of criminal

proceedings was granted, where the Washington Constitution established the right to public access).

If this Court therefore decides that a Writ of Prohibition is not the proper writ to raise the constitutional issues presented, it should nevertheless review it as a Writ of Mandamus, seeking to mandate that the Judges and the PA shall conduct bail hearings only after giving notice and an opportunity for the accused to appear following contested District Court first appearance hearings.¹⁰ *Ishikawa, supra.*

IV. RESPONDENTS’ ARGUMENT THAT THE FIRST APPEARANCE IN DISTRICT COURT DOES NOT QUALIFY AS A FORMAL JUDICIAL PROCEEDING AND A CRITICAL STAGE IGNORES UNITED STATES SUPREME COURT BLACK LETTER PRECEDENTS

While Respondents agree that the Sixth Amendment right to counsel attaches “at all critical stages” of a criminal prosecution, it instead asserts that the first appearance proceeding in District Court after a warrantless arrest does not qualify as a critical stage because charges have not yet been filed.

CrR 3.2.1 “Procedure Following Warrantless Arrest -- Preliminary Appearance” requires the Superior Court to hold a preliminary appearance

¹⁰ A Writ of Mandamus may be employed to prohibit the doing of an act as well as compelling it. *State ex rel. O’Connell v. Yelle*, 51 Wn.2d 620, 629 (1958); *Freeman v. Gregoire, supra.*

hearing, unless, as is the procedure in King County, a defendant has already appeared before a court of limited jurisdiction for a preliminary appearance. By virtue of this rule and clear precedents, there is concurrent jurisdiction in both District Court and Superior Court for the first appearance hearing following a warrantless felony arrest. *State v. Stevens County District Court Judge*, ___ Wn.2d ___, 453 P.3d 984 (2019).

Assume, *arguendo*, that the King County Superior Court adopted a procedure, as is the rule in most counties, that an arrestee initially appears before a Superior Court judge for his first appearance pursuant to this rule.¹¹ If so, would the DPA then be entitled to later obtain an *ex parte* increase in bail from another Superior Court judge if it were displeased with the bail ruling of the first Superior Court judge at this first hearing, which is essentially what occurred in the instant case? The answer is obviously no.

Respondents argue at page 13 of their Answer that *Rothgery v. Gillespie Co. Tex.*, 554 U.S. 191 (2008) (cited at page 22 of Writ) is not controlling because in that matter a “complaint” was filed, contending that the right to counsel at a preliminary appearance requires a charging document. Respondents’ argument fails because *Rothgery* was not formally

¹¹ See Allen Dec’l, pp. 8-9.

charged at the time of the bail hearing and the so-called “complaint” was just a probable cause affidavit prepared by the arresting officer.

The Texas Constitution requires that charges in all criminal cases where a prison term may be imposed must be through a grand jury indictment:

. . . . and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary,

Tex. Const. art. I, § 10.

The underlying U.S. District Court’s decision in Rothgery’s civil rights case, which was later reversed by the Supreme Court, nevertheless makes it clear that “no formal charges” had been instituted at the time of his bail hearing:

In light of this Court’s determination that no formal charges had been filed against Rothgery with the presentation of the probable-cause affidavit to Judge Schoessow, On July 16, 2002, pursuant to Article 15.17(a), Judge Schoessow advised Rothgery of his rights, informed him of the crime accused, advised him of the right and procedures for obtaining counsel, determined probable existed for his detention and set bond. . . .

Rothgery v. Gillespie Cty., Tex., 413 F.Supp.2d 806, 814 (W.D. Tex. 2006), aff’d, 491 F.3d 293 (5th Cir. 2007), vacated 554 U.S. 191, 128 S. Ct. 2578, 171 L.Ed.2d 366 (2008).

A criminal complaint in Texas is not a substitute for being charged by an Indictment returned by a grand jury. In *Rothgery* it was merely a pleading signed by the arresting officer, much like the Statement of Probable Cause in *Pimentel*, although unlike *Pimentel*, done without the knowledge or involvement of the prosecutors. As the *Rothgery* Federal Court of Appeals judges wrote in their now reversed appellate decision (which is still relevant on the issue of the underlying procedural facts):

It is undisputed in this appeal that the relevant prosecutors were not aware of or involved in Rothgery's arrest or appearance before the magistrate on July 16, 2002. There is also no indication that the officer who filed the probable cause affidavit at Rothgery's appearance had any power to commit the state to prosecute without the knowledge or involvement of a prosecutor.

Rothgery v. Gillespie Cty., Tex., 491 F.3d 293, 297 (5th Cir. 2007), vacated, 554 U.S. 191, 128 S. Ct. 2578, 171 L.Ed.2d 366 (2008) (emphasis added).

Therefore, it is clear that *Rothgery* applies to arrestees who are not yet formally charged, in total similarity to *Pimentel*, and is controlling.

Respondents also cite *State v. Judge*, 100 Wn.2d 706 (1984), (at page 12 of their Answer) for the proposition that the right to counsel does not arise until a critical stage of the proceedings, which it asserts can only occur after the institution of formal charges.

The *Judge* decision considered whether a blood draw of a suspected drunk driver who killed three children could be taken without first

appointing counsel. The blood draw had to occur within a few hours after the incident, or the alcohol would metabolize, which would obviously occur prior to the appointment of an attorney or charges being brought. *Judge's* holding must therefore be limited to this narrow set of facts relating to a DUI blood draw after an arrest.

Respondents (at page 12 of their Answer) also cite and rely on *Kirby v. Illinois*, 406 US 692 (1972) in support of its position that charges must be filed for a hearing to be a critical phase where counsel is required. However, *Kirby* only holds that the right to counsel does not attach at a “showup.”¹² In order to put this ruling into context, the showup in *Kirby* consisted of the police bringing a robbery victim to the station shortly after the incident in order to try to make an identification of the two suspects who were just arrested.

The *Judge* and *Kirby* holdings obviously contrast with the formal District Court first appearance hearing in *Pimentel* where the DPA, defense counsel and a judge were present in open court and pleadings (Superform and Statement of Probable Cause) had been filed.

¹² A showup is an informal identification procedure that is used by police within minutes or hours of a crime to give the victim an opportunity to view the suspect in an attempt to make an identification when memories are supposedly fresh. *See, e.g., State v Rogers*, 44 Wn.App. 510 (1986) (show up conducted six hours after the incident at the time of the suspects arrest)

Moreover, the current *ex parte* King County procedure directly conflicts with *Coleman v. Alabama*, 399 U.S. 1 (1970) (discussed at pp. 25-27 of Writ) which 50 years ago held that a preliminary proceeding held in a state prosecution for murder, prior to charges being filed, was a critical stage entitling the accused to an attorney. The preliminary hearing took place before the prosecutor presented the case to a grand jury for an indictment. *Id.* at p. 8. Therefore, consistent with Washington's first appearance procedure, formal charges were not yet filed in *Coleman* at the time of the preliminary hearing.

In fact, the Alabama preliminary hearing procedure serves the same purpose as the first appearance hearing that occurred in the instant case:

. . . the sole purposes of a preliminary hearing are to determine whether there is sufficient evidence against the accused to warrant presenting his case to the grand jury and, if so, to fix bail if the offense is bailable.

Coleman, id. at 8 (emphasis added). If *Coleman* had already been charged with murder or other crimes, there would have been no need for the preliminary hearing.¹³

¹³ In Alabama, Texas and many other states, felony charges in the form of an Indictment can only be returned by a grand jury, because of their state constitutions. Federal prosecutions likewise require a grand jury indictment pursuant to the Fifth Amendment. Washington's constitution does not require this and the charges are instead almost always by Information. *State v. Nordstrom*, 7 Wash. 506 (1893).

The *Coleman* Court held that the preliminary hearing was a “critical stage,” and counsel must be provided. *Id.* at 9-10. This issue was therefore resolved by the US Supreme court 50 years ago when it ruled that the pre-charging preliminary procedure in Alabama, which is essentially the same as that occurring at the first appearance hearings in Washington, was a “critical stage.”

V. **CONCLUSION**

The Respondent Judges and Prosecutor should not be allowed to dodge their constitutional and statutory, as well as ethical responsibilities, by denying defendants their constitutional rights by virtue of its longstanding unconstitutional *ex parte* bail procedure.

RESPECTFULLY SUBMITTED this 26th day of March, 2020.

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PROOF OF SERVICE

Sarah Conger swears the following is true under penalty of perjury under the laws of the State of Washington:

On the 26th day of March, 2020, I filed the above Petitioner Pimentel's Rely to Answer of Respondent via the Appellate Court E-File Portal through which Respondent's counsel listed below will be served:

Ann M. Summers
King County Prosecutor's Office
King County Courthouse
516 Third Avenue, W554
Seattle, WA 98104

And e-mailed to Petitioner.

DATED at Seattle, Washington this 26th day of March, 2020.

/s/ Sarah Conger
Sarah Conger, Legal Assistant

APPENDIX A

Apr. 11, 2018 1:40PM

218010696

No. 0804 P. 16

1901757

SUPERFORM

CONJUNCTION NUMBER	B/A NUMBER	PCN NUMBER
AGENCY: <input type="checkbox"/> UNINCORPORATED KING COUNTY <input checked="" type="checkbox"/> CITY OF FEDERAL WAY		CASE NUMBER: 18-3699
		FILE NUMBER

DATE OF ARREST/TIME 4-17-18 1140	BOOKING DATE/TIME 4-17-18	ARREST LOCATION 73925 8th Aves
NAME (LAST, FIRST, MIDDLE IN. BR. 1, 2) PIMENTEL, JULIAN T.		ALIAS, NICKNAMES
IDENTITY IN DOUBT? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	DOB	SEX: M RACE: W HGT: 504 WGT: 110 EYES: GRN HAIR: BRO SKIN TONE:
SCARS, MARKS, TATTOOS, DEFORMITIES		ARMED/DANGEROUS YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
LAST KNOWN ADDRESS		CITY STATE ZIP RESIDENCE PHONE BUSINESS PHONE CITIZENSHIP US
OCCUPATION	EMPLOYER, SCHOOL (ADDRESS, SHOP/UNION NUMBER)	SOCIAL SECURITY NUMBER
DRIVER'S LICENSE #	STATE WA APIS #	FBI # STATE ID #
VEHICLE LICENSE #	STATE YEAR MAKE MODEL VEHICLE LOCATION	TOW COMPANY
PERSON TO BE CONTACTED IN CASE OF EMERGENCY		RELATIONSHIP ADDRESS CITY STATE PHONE
1) OFFENSE <input type="checkbox"/> DV INDECENT LIBERTIES	ROW/ROW# 0A.44.100	COURT/CAUSE CITATION #
2) OFFENSE <input type="checkbox"/> DV	ROW/ROW#	COURT/CAUSE CITATION #
3) OFFENSE <input type="checkbox"/> DV	ROW/ROW#	COURT/CAUSE CITATION #
4) OFFENSE <input type="checkbox"/> DV	ROW/ROW#	COURT/CAUSE CITATION #
ANY OTHER ADDITIONAL CHARGES		CRIMINAL TRAFFIC CITATION ATTACHED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> ACCOMPLICES
LIST VALUABLE ITEMS OR PROPERTY LEFT FOR PARENTS AT JAIL		
LIST VALUABLE ITEMS OR PROPERTY ENTERED INTO EVIDENCE YES <input type="checkbox"/> NO <input type="checkbox"/> IF YES DESCRIBE (SIMPLE DESCRIPTION, IDENTIFYING MARKS, SERIAL #)		
TOTAL CASH OF ARRESTEE \$	WAS CASH TAKEN INTO EVIDENCE? YES <input type="checkbox"/> NO <input type="checkbox"/> AMOUNT \$	SIGNATURE OF JAIL STAFF RECEIVING ITEMS/SERIAL #
ARRESTING OFFICER/SERIAL # R Adams 167	TRANSPORTING OFFICER/SERIAL #	SUPERVISOR SIGNATURE/SERIAL #
SUPERFORM COMPLETED BY (SIGNATURE/SERIAL #) R Adams 167		CONTACT PERSON FOR ADDITIONAL INFORMATION (NAME/SERIAL #/PHONE) FWPD RECORDS 253-836-6700
MISDEMEANOR BOOKINGS: Complete in this line. FELONY BOOKINGS: Complete both sides. OBJECTION TO RELEASE (MISDEMEANOR OR FELONY) IS ON REVERSE SIDE. FILED		
COUNTY	SUPERIOR COURT <input type="checkbox"/> IN CUSTODY <input type="checkbox"/> COURT CAUSE (STAMP OR WRITE)	APR 18 2018
FILING INFO.	<input type="checkbox"/> AT LARGE	KCCS - SOUTH DIVISION MALENG REGIONAL JUSTICE CENTER
COURT/DIST.	<input type="checkbox"/> OUT ON BOND	
CT. NO.	DIST. CT. SUP. CT. DATE WARRANT NUMBER	
WARRANT DATE	OFF CODE OFFENSE	AMOUNT OF BAIL FELONY <input type="checkbox"/> BENCH <input type="checkbox"/> MISD <input type="checkbox"/> ARREST <input type="checkbox"/>
POLICE AGENCY ISSUING	COURT	WARRANT RELEASED TO: SERIAL UNIT DATE TIME
PERSON APPROVING EXTRADITION	SEAKING LOCAL ONLY WAC STATE WIDE <input type="checkbox"/>	NIC-WILL EXTRADITE FROM ID & OR ONLY <input type="checkbox"/>
		NIC-WILL EXTRADITE FROM OR, ID, MT, WY, CO, NV, UT, CO, AZ, NM, N.M.A.K <input type="checkbox"/>
		NIC-WILL EXTRADITE FROM ALL 50 STATES <input type="checkbox"/>
CONF _____	DOE _____	DOO _____
WAC _____	YOE _____	YOO _____
NIC _____	OPF _____	OPW _____

SUSPECT NAME: PIMENTEL, JULIAN T.

18-3699
CASE NUMBER

STATEMENT OF PROBABLE CAUSE: NON-VUCSA FELONY

CONCISELY SET FORTH FACTS SHOWING PROBABLE CAUSE FOR EACH ELEMENT OF THE OFFENSE AND THAT THE SUSPECT COMMITTED THE OFFENSE. IF NOT PROVIDED, THE SUSPECT WILL BE AUTOMATICALLY RELEASED. INDICATE ANY WEAPON INVOLVED. (DRUG CRIME CERTIFICATE BELOW.)

ON 2-10-18 AT 29954 4 AVE S, WITHIN THE City of Federal Way, COUNTY OF KING, STATE OF WASHINGTON, THE FOLLOWING DID OCCUR:

On 2-10-18, Julian Pimentel had sexual intercourse with ARW (DOB: [REDACTED]) after giving her a large amount of alcohol (vodka) and she was unable to give her consent due to her level of intoxication. Earlier in the day, Pimentel, ARW, and ARW's friend went to the Commons Mall, where Pimentel stole a bottle of vodka. They all drank alcohol at the mall before eventually going to ARW's friend's house. At the house, ARW drank about 6 shots of vodka in 30 minutes while she was in a camper with Pimentel and two other friends. When ARW was heavily intoxicated (lying on a bed), Pimentel had the others leave the camper for about 30 minutes. Afterwards, Pimentel bragged that he "fucked the shit out of [ARW]" to one of ARW's friends. Later, when ARW was no longer under the effects of the alcohol, she recalled portions of what Pimentel did to her (including that Pimentel took off her clothing, that Pimentel was on top of her, that she felt pain in her vagina, that the camper was shaking, and that she heard Pimentel opening a condom wrapper. The next day, ARW's vagina felt sore and she was bleeding (although she was not on her period).

I CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

REQUEST 72-HOUR RUSH FILE?
YES NO
ANTICIPATED FILING DATE

DATE AND PLACE 3-30-18/ FEDERAL WAY WA

SIGNATURE/AGENCY *[Signature]*
Federal Way PD

DRUG CRIME CERTIFICATE

Part I: On the suspect DELIVERED POSSESSED WITH INTENT TO DELIVER/MANUFACTURE POSSESSED what the undersigned officer based on training and experience, believes to be (approximate quantity and type of controlled substance) .. Approximate street value of the controlled substance is (value of drug) \$00.
Part II: FACTS INDICATING THE SUSPECT DELIVERED POSSESSED WITH INTENT TO DELIVER/MANUFACTURE or POSSESSED THE CONTROLLED SUBSTANCE:

On - at within the County of King, State of Washington,

My source of information about this crime (e.g., myself, other person with firsthand knowledge)

Other Facts:

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date and Place:

Signature/Agency:

REQUEST 72-HOUR RUSH FILE? YES NO
SODA ZONE YES NO
DRUG FREE ZONE? Exact location is required: YES NO
ANTICIPATED FILING DATE LAB WORK REQUESTED? (Date/Type)

LAW ENFORCEMENT OBJECT TO RELEASE? YES NO . IF YES, EXPLAIN WHY SAFETY OF INDIVIDUAL OR PUBLIC WILL BE THREATENED IF SUSPECT IS RELEASED ON BAIL OR RECOGNIZANCE (CONSIDER HISTORY OF VIOLENCE, MENTAL ILLNESS, DRUG DEPENDENCY, DRUG DEALING, DOCUMENTED GANG MEMBER, FAILURE TO APPEAR, LACK OF TIES TO COMMUNITY). INCLUDE FARR GUIDELINES. DESCRIBE TYPE OF WEAPON. BE SPECIFIC.

TIES TO COMMUNITY (MARITAL STATUS, TIME IN COUNTY, ETC.)

CONVICTION RECORD: SUBJECT ARMED/DANGEROUS SUSPECT IDENTITY IN QUESTION WARRANT(S) FOR FTA
 HISTORY OF FTA'S (LIST)

PRELIMINARY APPEARANCE DATE JUDGE BAIL AMOUNT \$
RETURN DATE CONDITIONS PR Y/N RETURNED Y/N EXCUSED Y/N

NON
DRUG
CRIME
PROBABLE
CAUSE
DRUG
CRIME
CERTIFICATE
FOOTER
OBJECT
TO
RELEASE
DPA

APPENDIX B

Effective: July 1, 2008

West's RCWA 36.17.020

36.17.020. Schedule of salaries

Currentness

The county legislative authority of each county or a county commissioner or councilmember salary commission which conforms with [RCW 36.17.024](#) is authorized to establish the salaries of the elected officials of the county. The state and county shall contribute to the costs of the salary of the elected prosecuting attorney as set forth in subsection (11) of this section. The annual salary of a county elected official shall not be less than the following:

(1) In each county with a population of one million or more: Auditor, clerk, treasurer, sheriff, members of the county legislative authority, and coroner, eighteen thousand dollars; and assessor, nineteen thousand dollars;

(2) In each county with a population of from two hundred ten thousand to less than one million: Auditor, seventeen thousand six hundred dollars; clerk, seventeen thousand six hundred dollars; treasurer, seventeen thousand six hundred dollars; sheriff, nineteen thousand five hundred dollars; assessor, seventeen thousand six hundred dollars; members of the county legislative authority, nineteen thousand five hundred dollars; and coroner, seventeen thousand six hundred dollars;

(3) In each county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand: Auditor, sixteen thousand dollars; clerk, sixteen thousand dollars; treasurer, sixteen thousand dollars; sheriff, seventeen thousand six hundred dollars; assessor, sixteen thousand dollars; members of the county legislative authority, seventeen thousand six hundred dollars; and coroner, sixteen thousand dollars;

(4) In each county with a population of from seventy thousand to less than one hundred twenty-five thousand: Auditor, fourteen thousand nine hundred dollars; clerk, fourteen thousand nine hundred dollars; treasurer, fourteen thousand nine hundred dollars; assessor, fourteen thousand nine hundred dollars; sheriff, fourteen thousand nine hundred dollars; members of the county legislative authority, fourteen thousand nine hundred dollars; and coroner, fourteen thousand nine hundred dollars;

(5) In each county with a population of from forty thousand to less than seventy thousand: Auditor, thirteen thousand eight hundred dollars; clerk, thirteen thousand eight hundred dollars; treasurer, thirteen thousand eight hundred dollars; assessor, thirteen thousand eight hundred dollars; sheriff, thirteen thousand eight hundred dollars; members of the county legislative authority, thirteen thousand eight hundred dollars; and coroner, thirteen thousand eight hundred dollars;

(6) In each county with a population of from eighteen thousand to less than forty thousand: Auditor, twelve thousand one hundred dollars; clerk, twelve thousand one hundred dollars; treasurer, twelve thousand one hundred dollars; sheriff, twelve thousand one hundred dollars; assessor, twelve thousand one hundred dollars; and members of the county legislative authority, eleven thousand dollars;

(7) In each county with a population of from twelve thousand to less than eighteen thousand: Auditor, ten thousand one hundred dollars; clerk, ten thousand one hundred dollars; treasurer, ten thousand one hundred dollars; assessor, ten thousand one hundred dollars; sheriff, eleven thousand two hundred dollars; and members of the county legislative authority, nine thousand four hundred dollars;

(8) In each county with a population of from eight thousand to less than twelve thousand: Auditor, ten thousand one hundred dollars; clerk, ten thousand one hundred dollars; treasurer, ten thousand one hundred dollars; assessor, ten thousand one

hundred dollars; sheriff, eleven thousand two hundred dollars; and members of the county legislative authority, seven thousand dollars;

(9) In each county with a population of from five thousand to less than eight thousand: Auditor, nine thousand one hundred dollars; clerk, nine thousand one hundred dollars; treasurer, nine thousand one hundred dollars; assessor, nine thousand one hundred dollars; sheriff, ten thousand five hundred dollars; and members of the county legislative authority, six thousand five hundred dollars;

(10) In each other county: Auditor, nine thousand one hundred dollars; clerk, nine thousand one hundred dollars; treasurer, nine thousand one hundred dollars; sheriff, ten thousand five hundred dollars; assessor, nine thousand one hundred dollars; and members of the county legislative authority, six thousand five hundred dollars;

(11) The state of Washington shall contribute an amount equal to one-half the salary of a superior court judge towards the salary of the elected prosecuting attorney. Upon receipt of the state contribution, a county shall continue to contribute towards the salary of the elected prosecuting attorney in an amount that equals or exceeds that contributed by the county in 2008.

Credits

[[2008 c 309 § 2](#), eff. July 1, 2008; [2001 c 73 § 3](#); [1994 sp.s. c 4 § 1](#); [1991 c 363 § 52](#); 1973 1st ex.s. c 88 § 2; 1971 ex.s. c 237 § 1; 1969 ex.s. c 226 § 1; 1967 ex.s. c 77 § 2; 1967 c 218 § 3; 1963 c 164 § 1; 1963 c 4 § 36.17.020. Prior: 1957 c 219 § 3; prior: (i) 1953 c 264 § 1; 1949 c 200 § 1, part; 1945 c 87 § 1, part; 1937 c 197 § 3, part; 1933 c 136 § 6, part; 1925 ex.s. c 148 § 6, part; 1919 c 168 § 2, part; Rem. Supp. 1949 § 4200-5a, part. (ii) 1921 c 184 § 2; RRS § 4203.]

OFFICIAL NOTES

Findings--2008 c 309: "The legislature finds that an elected county prosecuting attorney functions as both a state officer in pursuing criminal cases on behalf of the state of Washington, and as a county officer who acts as civil counsel for the county, and provides services to school districts and lesser taxing districts by statute.

The elected prosecuting attorney's dual role as a state officer and a county officer is reflected in various provisions of the state Constitution and within state statute.

The legislature finds that the responsibilities and decisions required of the elected prosecuting attorney are essentially the same in every county within Washington state, from a decision to seek the death penalty in an aggravated murder case, to the decision not to prosecute but refer an offender to drug court; from a decision to pursue child rape charges based solely upon the testimony of the child, to a decision to divert juvenile offenders out of the justice system. Therefore, the legislature finds that elected prosecuting attorneys need to exercise the same level of skill and expertise in the least populous county as in the most populous county.

The legislature finds that the salary of the elected county prosecuting attorney should be tied to that of a superior court judge. This furthers the state's interests and responsibilities under the state Constitution, and is consistent with the current practice of several counties in Washington state, the practices of several other states, and the national district attorneys' association national standards." [2008 c 309 § 1.]

Effective date--2008 c 309: "This act takes effect July 1, 2008." [2008 c 309 § 3.]

Findings--Intent--Severability--2001 c 73: See notes following [RCW 35.21.015](#).

Purpose--Captions not law--1991 c 363: See notes following [RCW 2.32.180](#).

Severability--1971 ex.s. c 237: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or

the application of the provision to other persons or circumstances is not affected.”
[1971 ex.s. c 237 § 4.]

Effective date--1971 ex.s. c 237: “This act shall take effect on January 1, 1972.”
[1971 ex.s. c 237 § 5.]

Notes of Decisions (19)

West's RCWA 36.17.020, WA ST 36.17.020

Current with Chapter 2 of the 2020 Regular Session of the Washington Legislature.

ALLEN, HANSEN, MAYBROWN, OFFENBECHER

March 26, 2020 - 4:24 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 98154-0
Appellate Court Case Title: Julian Pimentel v. The Judges of King County Superior Court et al.

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